IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

: O R D E R :

Bhagawani Devi Mohata Hospital
Vs.
A.D.J. Rajgarh & anr.

S.B. CIVIL WRIT PETITION NO.582/2005

DATE OF ORDER ::: FEBRUARY 10, 2005

P R E S E N T

HON'BLE MR. JUSTICE PRAKASH TATIA

Mr. J.K. Bhaiya, for the petitioner.
Mr. Pradeep Shah, for the respondent no.2/caveator.

REPORTABLE BY THE COURT :

Heard learned counsel for the parties.

The plaintiff/respondent filed an application under Order 7 Rule 14 C.P.C. seeking permission to produce about 25 documents. The Trial Court after considering the document allowed the said application and permitted the plaintiff to produce the documents in evidence. The plaintiff filed another application under Order 7 Rule 14 (2)(3) C.P.C. seeking direction against the petitioner for production of certain documents mentioned in the application. The trial court allowed the said application and directed the petitioner to produce the documents

referred in the application.

The petitioner is aggrieved against both these orders.

According to learned counsel for the petitioner, the documents which are sought to be produced by the plaintiff and for which permission was granted by trial court are concocted documents. The plaintiff has fabricated these documents, therefore, the trial court should not have permitted the plaintiff to produce these documents at such a belated stage.

After going through the facts mentioned in the writ petition as well as the reasons given in the impugned order, it is clear that the trial court, after carefully examining the documents and considering all aspects of the matter, acted within its jurisdiction and permitted the plaintiff to produce the documents in evidence, though filed late. There is no error of jurisdiction or even error of law so far as the impugned order to the extent of allowing the application under Order 7 Rule 14 C.P.C. Filed by the plaintiff for taking the documents on record is concerned.

Further, the contention of the petitioner that the documents are forged or concocted one are the questions which can be well decided by the trial court after the evidence of both the parties and at the time of final decision of the suit because these questions can be decided only after permitting both the parties to prove or disprove these documents.

In the impugned order itself, the trial court has

allowed the plaintiff's application dated 24.8.2004 and directed the petitioner/defendant to produce the documents mentioned in the plaintiff's application.

By this application, the plaintiff sought production of documents namely, Cash Books, Ledgers, O.T. Commission Receipt Books, Dak Dispatch Receipts, Form No.24, T.D.S. Record, Form No.16, Correspondence File and Cash Vouchers. The defendant in his reply to the said application very specifically stated that the plaintiff was working as C.M.O. in the defendant's hospital and all the documents which are required by the plaintiff are of the period when he was working on the post of C.M.O. It is also stated that the plaintiff was in fact Incharge of the hospital and he was responsible for all the works of the hospital. In addition to above, the defendant very specifically stated that all the record were in power and possession of the plaintiff himself and just after removal of the plaintiff, the hospital went in heavy losses, therefore, the hospital was closed. The defendant further very categorically said that the defendant used to live at Kolkatta and neither he has any knowledge about the said record nor the record is in possession of the defendant.

It appears from the impugned order that the trial court did not consider any of the facts mentioned in the reply filed by the petitioner/defendant and straightaway observed that the documents are relevant, therefore, the defendant should produce them.

Production of document can be ordered under Order 11

Rules 12 and 14 C.P.C. As per Rule 12, any party may apply to the Court for an order directing any other party to any suit to make discovery on oath of the documents which are or have been in his possession or power relating to any matter in question therein. Proviso to Rule 12 provides that the discovery shall not be ordered when and so far as the Court shall be of opinion that it is not necessary either for disposing fairly of the suit or for saving costs.

Rule 14 empowers the Court to order production of the document by any party in the suit which are in his possession or power.

Apart from Rules 12 and 14, Rule 15 provides that a party may seek inspection of the documents or may seek production of the documents and may obtain copies of the documents by giving notice to the other party in whose pleadings or affidavits, reference is made to any document or who has entered any document in any list annexed to his pleadings.

The Court may also refuse the production of the documents in the contingencies mentioned in Rule 15.

For getting production of documents referred in pleadings or affidavits, the party seeking production is required to serve notice under Rule 16. The documents can be inspected as provided under Rules 17 and 18 and copies can be provided under Rule 19.

Rule 20 provides that where a party from whom discovery of any kind or inspection is sought objects to the same, or any part thereof, the Court may if satisfied that the right

the discovery or inspection sought depends upon determination of any issue or question in dispute in the suit or that for any other reason, it is desirable that any issue or question in dispute in the suit should be determined before deciding upon the right to discovery or inspection, order that such issue or question be determined first and reserve the question as to the discovery or inspection.

Meaning thereby, before ordering even discovery or inspection of the documents, the Court is required to apply its mind so as to find out whether straightaway order can be passed despite the objections raised by the party from whom discovery and inspection of document has been sought. Obviously, it has been provided because of the reason that the party against whom order is sought may have very many objections including the plea that the documents are not in his power or possession. In that situation, unless a finding is recorded that the documents are in power and possession of the party against whom the order is sought, no order even of inspection and discovery can be passed and, therefore, naturally no order for production of document can be passed by the Court which is not in power and possession of any party to the proceedings.

Rule 14 also empowers the Court to pass the order only in relation to the documents which are in possession or in power of the party, against whom has been sought. A joint reading of Rule 14 and Rule 20 makes the procedure entirely clear about the manner in which the application for production of the document can be dealt with.

In this case, as stated above, the Court ordered production of the document ignoring the objections of the petitioner and, therefore, the order cannot be allowed to stand.

The Court should always be cautious in passing such type of orders like production of documents by any of the parties because of the reason that in case, the order is not complied with, serious consequences of drawing adverse inference against the defaulting party likely to follow easily. In such situation despite the fact that the other party, even if wants to produce the documents, cannot produce which may result into dismissal of the suit in case the plaintiff fails to produce the documents and decree against the defendant, in case the defendant fails to produce the documents.

The Trial Court in its impugned order has not recorded any reason for not believing what the defendant has said in its reply and without rejecting the defendant's contention, the trial court should not have passed the order directing the defendant to produce the documents.

It may be relevant to mention here that for production of documents from the other party, it is necessary to establish that the documents are in existence and there is prima-facie proof that the other party is having the documents in his power and possession.

Accordingly, the impugned order so far as it issues direction to the defendant/petitioner to produce documents

referred in the application dated 24.8.2004 is set aside.

In view of the above discussion, this writ petition is partly allowed as indicated above.

(PRAKASH TATIA), J.

S.Phophaliya